


MEMORANDUM

To: Mayor and Members, Board of County Commissioners
Cc: Tom Willi, County Administrator
Through: Richard Collins, County Attorney
From: Susan Grimsley, Asst. County Attorney 
Re: Sale of Lots on Cudjoe Key by County
Date: May 12, 2005

(Please be advised that language from recorded instruments is written as recorded, with some errors.)

QUESTION: The County Administrator is investigating the possibility of the sale of two lots on Cudjoe Key owned by the County. They are described as Lots 2 and 3 of Block 23, Cudjoe Gardens Eighth Addition, Cudjoe Key, Monroe County Florida, According to the plat thereof as recorded in Plat Book 7, Page 16, of the Public Records of Monroe County, Florida. This item was on the April 20, 2005, BOCC agenda and was tabled with instructions to staff "to research the liens on the property and look at possible workforce housing."

ANSWER: There are restrictions in the deeds which apparently were questioned by the Board. None of the restrictions affect the sale of the property by the County. One restriction on one lot might have affected the use of the proceeds, but the restriction is moot as the condition has been fulfilled. Statutory procedures must be followed for any sale. Because the property may be as expensive as construction, if not sold, single family rental housing could be built as affordable units, possibly for those serving at the substation. The property cannot be used for an expansion of the offices or vehicle storage of the substation.

No investigation was made concerning any amendments by the Homeowners' Association to the Declaration of Restrictions affecting the subdivision, or concerning the existence of a Homeowners' Association and any rules or bylaws affecting this property and how it may be used.

DISCUSSION:

A. There are several documents with restrictions that may affect the sale of the land as follows:

1. **Plat Recorded at Plat Book 7, page 16** – There are utility restrictions and wetlands described on the plat. There is nothing on the plat that would affect the sale of the property or the use of the proceeds by Monroe County.
2. **DECLARATION OF RESTRICTIONS FOR CUDJOE GARDENS EIGHTH ADDITION. A SUBDIVISION RECORDED IN PLAT BOOK 7, PAGE 16, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA (OR Book 823, pages 1135-1137)** These restrictions are referenced on all the deeds mentioned in paragraphs 3-5 below. In particular, there is one restriction is as follows:

"Occupancy: All lots shall be limited to single family residences excepting the one lot on the corner of U.S. #1 and Drost Drive, namely lot 1, Block 23, Cudjoe Gardens Eighth Addition which shall allow limited business subject to approval of Subdivider, Vincent M. Drost." (Lot 1 is the Sheriff's sub-station.)

This limits the use of lots 2 & 3 to single family residences. I have not been able to ascertain whether the restrictions have been changed. Changes in the Declaration of Restrictions are possible by action of a majority of the homeowners, as provided in the Declaration itself. Given the nature of the area, it is unlikely that this restriction has been changed.

3. **Deed of January 10, 1984 Lot 1 Block 23 – (This is the substation lot.)** This property was conveyed by gift from Vincent and Wilver Drost to Monroe County "for use as a substation, and or, administrative offices by the Monroe County Sheriffs' Department. If not in such use 10 years from this date, the property shall revert to former owners. No prisoners shall be housed on said land."

This property was put into use by the Sheriff's Department within the required time period, sometime in the 1980's. There is no longer any problem with the reverter clause, as the property is in use as a substation.

4. **Deed of March 9, 1992 Lot 2 Block 23** –This lot was conveyed by gift from the Drosts to Monroe County. It contains the following language: "Any use of this lot subject to Sellers' approval. No house shall be built on this lot 2, Block 23 as long as we, the givers of said lot 2, block 23, are living on lot 12, block 5 of Cudjoe Gardens."

The only available use is for a single family residence under the Declaration. It appears that the purpose of the restriction was to protect the view and privacy from the Grantors' house, as the Fourth Addition is directly abutting the Eighth Addition across Drost Drive. The estate of Vincent Drost conveyed Lot 12, block 5, Cudjoe Gardens, Plat Book 4 page 78 to Alice Poll. The plat referenced is the plat of the Fourth Addition. Examination of the plat of Lot 12, Block 5 shows that this lot is across from Lot 2, Block 23 of the Eighth Addition. According to one of the trustees involved in the disposition of the estate, this was the family home and both Vincent and Wilver Drost are deceased.

The "Sellers", who are also the "givers", are deceased. There is conspicuously no reference to successors in interest, heirs, or subsequent owners being able to control the use of the lot or the time frame for development. It is quite clear that the Drosts meant to protect their interests in the use of the property, but that protection was not extended to successors in interest.

5. **Deed March 9, 1992 Lot 3 Block 23** – This lot was given as a gift by Vincent and Wilver Drost to Monroe County. Language reads, "When said lot is sold or built on, the proceeds of value thereof shall be used for quarters on Lot 1, block 23, for Ambulance Crew so a Complete sub-station can be maintained on lot 1 as agreed to in original gift of lot, on or before January 11, 1994."

The date refers to the ten year period in which to build a Sheriff's sub-station on Lot 1. The intent of this restriction has already been carried out. There is a building with the Sheriff's sub-station, as well as a two bedroom building with facilities ("quarters") for the EMS crew.

Question? Does the money from the sale have to go to the Sheriff, or the EMS facility, or is the restriction moot?

The position of mootness is defensible because the "quarters" on Lot 1 have been built. The Grantor's desire has been carried out, to have a Sheriff's sub-station and ambulance crew available for the neighborhood and surrounding community. Any funds obtained from a sale will reimburse the County for the facility already built. The grantors' intent has been met prior to any sale. A more conservative position might be that any sale proceeds would have to be used to fund, maintain or refurbish the existing ambulance crew quarters. However, if there is already sufficient funding, the money might be better used for another public purpose.

B. Other concerns - The agenda item follow up mentioned using the lots for "workforce housing" as opposed to selling them.

1. The area is zoned for single family homes. The Planning Department would have to be consulted as to what is a permitted use. However, a brief discussion about this with staff indicates that housing might be built for the ambulance crew that would qualify as single family. Whether the neighbors would agree that the Declaration language of "single family residence" and the current definition of "single family" for zoning, allowing unrelated adults living in a single family house, have the same meaning remains to be seen.
2. If building is contemplated, there are setbacks and other construction regulations in the Declaration of Restrictions mentioned above which may supersede the land development regulations and preclude manufactured housing.
3. If a sale of the property is contemplated, the statutory procedures must be followed.

CONCLUSION: The lots in question may be sold. The proceeds will reimburse the County for the crew quarters, possibly in excess of the cost. The County may use the funds as it deems appropriate. As a practical matter, one would have to analyze whether any one would object to the use of the funds, whether the crew quarters are sub-standard and need upgrading to comply with the intent of the restriction, or whether there are budget issues that would come into play.

In regard to "workforce housing," if the County retains the property, single family housing may be built under current restrictions and regulations which could house county staff on an "affordable" basis. Dormitory housing is not an option.